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Duane A. Parde

ALEC Executive Director

ORIGINAL

October 17, 2001

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Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Powell:

On October 2, 2001 the Georgia Public Service Commission unanimously endorsed BellSouth Corporation's entry into the long distance market and on September 19, 2001 the Louisiana Public Service Commission unanimously concluded that BellSouth had met the open local market requirement of the Telecommunications Act and should be allowed to enter that state's long distance market.

In view of these two recent decisions, the American Legislative Exchange Council (ALEC) would like to bring to your attention our position on telecommunications deregulation. This year, ALEC's Telecommunications and Information Technology Task Force approved a policy position (copy enclosed) containing the following statement:

"...it remains ALEC policy that free market principles must prevail. Business should expect a competitive environment unburdened by indiscriminate regulations and market uncertainty with minimal political involvement."

With over 2,400 legislative members, ALEC has grown to become the nation's largest bipartisan, individual membership organization of state legislators. ALEC's mission is to advance the Jeffersonian principles of free markets, limited government, federalism and individual liberty among America's state legislators.

It is our hope that the Federal Communications Commission will consider the important role of the states, as delegated in the Telecommunications Act of 1996, when reviewing this - or any other service provider's - Section 271 application.

The Public Service Commissions in Louisiana and Georgia have clearly taken the necessary steps to create an environment where competition will take seed and grow, in turn, bringing consumers the most advanced technology and quality service at competitive prices.

2001-10-17
ENCLOSURE

As the Federal Communications Commission weighs this important issue, we urge you to give the strongest consideration to the recommendations made by states of Louisiana and Georgia.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Parde', with a large, stylized initial 'D'.

Duane Parde
Executive Director

Enclosures (2)

Copy to:

Magalie Salas, Secretary
Federal Communications Commission
Dorothy Attwood, Chief
Common Carrier Bureau, FCC
Susan Pie'
Policy Division, Common Carrier Bureau, FCC



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A National Association for America's State Legislators • Jeffersonian Principles in Action!

American Legislative Exchange Council Telecommunications Deregulation Policy Statement

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[Adopted January 2001]

The American Legislative Exchange Council is founded on the belief that the competitive and innovative forces of the free and open marketplace will ensure a wider range of consumer choice, value and protection than government regulation. In recent years, changes in telecommunications and information technology have revolutionized the way we live and work. With each new year, consumers are able to communicate and conduct business faster, cheaper and more productively, with virtually anyone in the world. As the technology revolution matures, ALEC, on behalf of its state legislator members, will continue to monitor this development and evolution of a critical infrastructure industry for a worldwide digital economy in the 21st Century.

The December 1993 "Resolution Lifting the Modification of Final Judgement Restriction on Long Distance Service", argued that "if telecommunications policy continues to erect artificial zones and allow exclusive market entry, then competition cannot flourish and consumers will be denied the benefits of competition."

In ALEC's State Factor "*Building Competitive Markets in the States*" (November 1996), ALEC asserted that the implementation of the Telecommunications Act would "create an environment where competition will take seed and grow, in turn, bringing consumers the most advanced technology and quality service at competitive prices."

Today, there is little doubt that telecommunications services are becoming increasingly competitive. Recent trends suggest that they may even become the most competitive aspect of the communications industry. With the upsurge in deployment of broadband Internet services, the telecommunications industry is forced to compete even more vigorously in the deployment of new technology. These broadband services (T1s, DS3s, etc.) have been largely limited to business customers, due to the enormous capital requirements of supplying the residential market. However, due to the rapid rise and maturation of the Internet, individual consumer demand for these services is rising sharply.

Since the Telecommunications Act of 1996 was enacted, the telecommunications industry has continually experienced "fits and starts" in advancing deregulation, technology, and furthering competition. Consequently, the process of bringing advanced technology to consumers has become a regulatory morass.

In spite of regulators and Washington's differing interpretations of the Telecommunications Act of 1996, and overwhelmingly litigious environment, and in some instances the application of anti-trust laws which further dampen competition and delay technological innovation, it remains ALEC policy that free market principles must prevail. Business should expect a competitive environment unburdened by indiscriminate regulations and market uncertainty with minimal political involvement.



The State Factor

***THE
TELECOMMUNICATIONS
ACT OF 1996***

***Building Competitive Markets
in the States***

**Telecommunications and Information Technology
Task Force**

The State Factor: The Telecommunications Act of 1996

Volume 22, Number 9

© November 1996

American Legislative Exchange Council

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Fifth Floor

Washington, D.C. 20006

(202) 466-3800

Publications Order Code: 9613 Cost to non-members: \$10.00 plus shipping and handling

The State Factor: The Telecommunications Act of 1996, has been published by the American Legislative Exchange Council (ALEC) Telecommunications and Information Technology Task Force as part of its mission to discuss, develop and disseminate public policies which expand free-markets, promote economic growth, limit government and preserve individual liberty. ALEC is the nation's largest bipartisan, voluntary membership organization of state legislators, with nearly 3,000 members across the nation. ALEC is governed by a 21-member Board of Directors of state legislators, which is advised by a 23-member Private Enterprise Board representing major corporate and foundation sponsors.

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THE TELECOMMUNICATIONS ACT OF 1996

Building Competitive Markets in the States

INTRODUCTION

The federal *Telecommunications Act* of 1996, enacted on February 8, 1996, represents the first major revision of federal telecommunications law in more than 60 years. The primary intent of the new law is to open all telecommunications markets to competition by developing fair rules for all participants. Additional provisions include: maintaining universal service; allocating additional spectrum to broadcasters; easing broadcast ownership restrictions; deregulation of the cable services industry; regulatory forbearance; and restriction of obscene and violent programming. Much of the new law will take time to implement and it will be even longer before the impact is felt by consumers. The immediate focus should be on the Federal Communications Commission (FCC) and how it implements the new law.

It is therefore critical the states pay close attention to the progress of the FCC throughout the implementation process and communicate concerns where appropriate. States should also review their own laws and regulations to ensure they are in compliance with new federal law. In addition, states need to continue to encourage competition in the telecommunications industry through deregulation while maintaining the goals of universal service and service quality.

This *State Factor* will make recommendations for state legislators to continue to work toward a competitive telecommunications industry, and provide a summary of the new law's provisions, and where appropriate, the states' role in them.

RECOMMENDATIONS FOR STATE LEGISLATORS

While the *Telecommunications Act* sets the stage for competition, it is still too early to know the outcome of the FCC's implementation of the Act. Also, each state has its own unique statutes, circumstances and time frames making it extremely difficult, if not impossible, to make specific recommendations fitting every state's needs. Therefore, it is recommended the following principles guide state legislators in complying with the intent of the Act, and working toward a competitive telecommunications industry.

■ Competition, not regulation, should shape the telecommunications industry. Regulation should serve as a substitute for competition only in those limited instances where competition cannot provide results which serve consumers' best interests.

■ Where regulation is necessary, it should be competitively neutral and equally applied to all carriers.

■ Universal service should be preserved, but ultimately only through explicit and identifiable subsidies.

■ All providers should be permitted to compete in all markets. However, some regulatory oversight may be needed during the transition to a fully competitive marketplace.

These principles are consistent with the intent of the new federal telecommunications law. It permits all providers to compete in all markets over time; establishes a federal/state joint board to address universal service; and creates ground rules that are generally the same for all carriers, and applies such rules in a competitively neutral fashion. From the new law we can conclude Congress expects competition to replace regulation. It requires, among other things, parties to negotiate interconnection agreements, involving the state public service commission only when there is a conflict.

However, there is still much work for the states to do. States should do three things to implement the *Telecommunications Act* and create an environment where competition will take seed and grow, in turn, bringing consumers the most advanced technology and quality service at competitive prices.

First, legislators should review their existing state statutes and amend them to remove any barriers to entry. The *Act* preempts any state law or regulation which prevents a provider from competing with an incumbent provider. Therefore, it is important states review their codes to determine if any such "barriers" exist. Examples of barriers might include limiting access to rights-of-ways, unequal application of taxes and franchise fees, and statutes permitting only one carrier. To date, the FCC has been asked to review only one alleged barrier to entry.

In 1995 the Texas legislature passed a bill requiring new entrants in the local exchange market to build their own facilities (build-out provision) instead of just reselling the incumbent local exchange carrier's service. Plaintiffs contend the enormous investment required to build new facilities constitutes a barrier to entry. Those supporting the build-out provision argue resale alone will not result in real competition. That can only be achieved with a facilities-based competitor.

Second, legislators should ensure regulation is applied equally to all competitors. Regulation, if necessary, should not focus on the provider of the service, but on the service itself regardless of who provides it. In a competitive environment, regulation should not burden one carrier more than any other. This is one of the reasons why it is critical that rate-base rate-of-return regulation be eliminated. During the transition period to competitive markets, price regulations should replace all rate-of-return regulations.

More than 30 states have adopted some sort of alternative regulation allowing companies to elect another form of regulation other than rate-base rate-of-return. Many states have required trade-offs for elimination of rate-of-return regulation, such as price caps, infrastructure commitments and allowing new local exchange competitors to enter the market. While not all companies want or need to change from rate-base rate-of-return regulation, especially if competition is not imminent in their areas, for those larger companies, where competitive pressures are imminent, the option to elect out of rate-base rate-of-return regulation is critical.

Rate-base rate-of-return regulation worked well when there was only one company providing all services. But it simply does not work in a competitive environment. Continuing rate-base rate-of-return regulation jeopardizes the natural development of the entire industry in general and damages specific companies in particular. It also imposes both direct and indirect costs on consumers.

Beyond eliminating rate-base rate-of-return, legislators should free the industry to respond to the marketplace. Companies, both incumbent and new providers, should have the freedom to price services according to what the market dictates. That includes being able to adjust prices in a timely manner.

Third, state legislators should endeavor to preserve universal service. The Act establishes a federal/state joint board to issue recommendations on universal service. State legislators should enact laws in their states to ensure customers have access to quality services at reasonable rates regardless of whether they live in an urban or rural part of a state. All telecommunications carriers should pay into a fund to preserve universal service. Ultimately, any subsidies to support universal service should be explicit and identifiable, not implicit.

The Telecommunications Act of 1996

The Telecommunications Act of 1996 lays out a blueprint for:

- Opening all telecommunications markets to competition
- Developing fair rules for all participants
- Maintaining universal service
- Allocation of additional spectrum to broadcasters
- Easing broadcast ownership restrictions
- Deregulation of the cable services industry
- Deregulatory forbearance
- Restriction of obscene and violent programming

The following is a summary of the major provisions of the bill with recommendations for state action where appropriate:

TELECOMMUNICATIONS SERVICES

Development of Competitive Markets

Interconnection and Procedures for negotiation, arbitration, and approval agreements. Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers, and not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to the new law.

The ability of companies to interconnect networks is critical to the success of competition. *The Telecommunications Act* opens all local markets to competition by preempting any state or local barriers to entry and establishing interconnection requirements. The FCC has established rules for implementing these interconnection requirements, but is being challenged in court by a number of states alleging the rules over-

step the FCC's authority. The states say *the Telecommunications Act* gives them responsibility for implementing interconnection requirements, and to continue to determine appropriate terms and conditions for entry into local markets as long as they did not constitute barriers to entry. The FCC Interconnection Order is also being challenged by local exchange carriers which are charging the rules amount to the taking of their property without just compensation.

Interconnection agreements were anticipated to be the result of voluntary negotiations between the parties. A number of local exchange carriers (LECs) have already negotiated interconnection agreements with new entrants and some of these agreements have been approved by state commissions. These will need to be reviewed by the companies and the state to ensure consistency with the *Telecommunications Act* and FCC interconnection rules. A Bell Operating Company (BOC) may also offer a statement of interconnection terms and conditions generally offered within a state to meet the interconnection requirements if a competitor has not requested interconnection.

If requested by either party, a state commission may arbitrate differences between parties negotiating interconnection agreements. Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. If no state action on the agreement is taken, the FCC shall preempt and assume the responsibility of the state.

Smaller (rural) telephone companies may be exempt from these requirements until the company has received a bona fide request for interconnection and the state commission determines such a request is not unduly economically burdensome, is technically feasible and is in the public interest. The state commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with FCC regulations.

Following are the interconnection requirements for all LECs and any additional interconnection requirements that apply specifically to incumbent LECs, along with state action required or authorized. Each of these requirements could be included in negotiated interconnection agreements and hence, submitted to the state for approval.

1. All LECs must allow reasonable nondiscriminatory resale of their services. Additionally, all incum-

bent LECs must allow resale of their services at wholesale rates. A state must determine the wholesale rate on the basis of the retail rate less avoided costs (marketing, billing, collection, etc.). Additionally, a state may prohibit a service purchased at wholesale rates from being resold to a category of customer different than the category for which it was intended (i.e. residential service resold to business customers).

2. All LECs must provide number portability, to the extent technically feasible, and dialing parity. States have been active in developing both interim and long-term solutions for number portability (the ability of a customer to keep the same number even when switching providers). As a result, states will need to monitor any FCC action that results in national number portability guidelines to ensure compliance. While there are some restrictions on a state's ability to require dialing parity (the ability to dial a number in the same manner regardless of provider, i.e., no dialing codes to access your provider) from a BOC, states may require dialing parity from other LECs.

3. All local service providers must provide access to poles, conduits and rights-of-way. The FCC must develop rules extending pole attachment policies to utilities and telecommunications carriers within two years from enactment. Parties may negotiate rates, terms and conditions, but a rate formula is also available which can serve as an upper bound on rates that can be charged to new entrants.

4. All LECs must establish reciprocal compensation arrangements for transport and termination of traffic between networks. A state may make the determination as to whether reciprocal compensation rates are just and reasonable. A state may only reject a negotiated agreement on reciprocal compensation arrangements if it discriminates or is not consistent with public interest standards.

5. All incumbent LECs must allow for physical collocation by competitors in their central offices. A state may determine that physical collocation is not practical for technical reasons or space limitation, based on an incumbent LEC's demonstration. In this case, virtual collocation may be authorized.

6. All incumbent LECs must provide access to unbundled network elements. If the LEC and a competitor are unable to reach agreement through negotiation, the state will determine the rates.

Also, to facilitate access to telephone numbers for all LECs, the FCC will designate one or more impartial parties to administer telephone numbers. The North American Numbering Council established by the FCC will be the neutral third party assuming numbering administration duties formerly performed by Bellcore and the LECs. The FCC can still defer to the states on numbering issues.

Removal of barriers to entry: No state or local statute or regulation may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. States still may take steps to preserve and advance universal service, manage use of public rights-of-way, and require providers in rural areas to meet certain requirements in intrastate service.

Universal service: A federal-state joint board will make recommendations to the FCC regarding: a definition of universal support; quality and rates; access to advanced services; access in rural and high-cost areas; equitable and nondiscriminatory contributions to the universal service fund; mechanisms to support universal service; access to advanced telecommunications services for schools, health care and libraries; and any additional principles the board deems necessary.

States may, in the case of an area served by a rural telephone company, and shall in all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission. Eligible carriers qualify for universal service support and must offer throughout the service area those services identified by the FCC to be supported by the federal universal service support mechanisms.

The FCC and states should assure that universal service is available at rates that are just, reasonable and affordable. The state, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards and guidelines to ensure that universal service bears no more than its reasonable share of cost.

The federal-state joint board must make its recommendation to the FCC within nine months of enactment, which was November 8. The FCC must then establish universal service rules within 15 months of enactment, which address the following:

- Definition of universal service
- Specific timetable for implementation
- Funding mechanism and who contributes
- Discount for interstate services to schools and libraries
- Competitively neutral rules for access to advanced services by schools, etc.

The states will then implement these rules. Specific state actions will include designating the eligible carriers to receive universal service funds and determining discounts for intrastate services for schools, health care facilities and libraries. A state may adopt additional universal service definitions if it provides for specific additional support mechanisms that don't rely on the federal universal service support mechanism

Access by persons with disabilities: If readily achievable, telecommunications services and equipment shall be accessible to persons with disabilities.

Coordination for interconnectivity: The FCC shall establish procedures for oversight of the coordinated network planning by telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service.

Market entry barriers proceeding: Within 15 months of enactment the FCC must complete proceedings for the purposes of identifying and eliminating market entry barriers for entrepreneurs and other small businesses to promote diversity of media voices, competition, technological advancement and the public interest. This will be reviewed every three years.

Illegal changes in subscriber carrier selection (slamming): Telecommunications carriers are prohibited from changing a subscriber's selection of a telecommunications provider except in accordance with verification procedures prescribed by the FCC. Nothing in this section of the *Telecommunications Act* shall preclude any state commission from enforcing such procedures with respect to intrastate services.

Infrastructure sharing: Within one year, the FCC shall prescribe regulations that require incumbent LECs to

make available to any qualifying carrier: network infrastructure, technology, information, and telecommunications facilities and functions to provide telecommunications services, or access to information services.

Provision of telemessaging service: Prohibits cross subsidization of telemessaging services and discrimination of other services in favor of telemessaging.

Eligible telecommunications carriers: Establishes carriers of last resort as relates to universal service and unserved areas. Eligible telecommunications carriers shall be eligible to receive universal service funds for its provision of universal service.

Exempt telecommunications companies: The FCC will determine rules for utilities to enter the telecommunications business. Any state commission with jurisdiction over a public utility company that is an associate company of a registered holding company and transacts business with a company that is an exempt telecommunications company may order an independent audit.

Special Provisions Concerning Bell Operating Companies

Bell operating company entry into interLATA services. A BOC may provide long-distance service outside of its region immediately. Additionally, BOCs may immediately provide long-distance service in connection with wireless services, audio programming or other programming services, alarm monitoring, video programming or other interactive video services or Internet services for K-12 schools and voice mail. A separate affiliate requirement applies to information storage and retrieval. All other incidental long-distance services do not have a separate affiliate requirement. In-region long-distance services are permitted once they have met certain conditions, i.e., after they have met the 14-point checklist (see below), and if they have an in-region, facilities-based competitor; or if no such provider has requested access or interconnection 10 months from enactment of *Telecommunications Act*.

14-Point Checklist

- Interconnection
- Access to network elements
- Access to poles, ducts, conduits and rights-of-way
- Access to unbundled local switching
- Access to unbundled local transmission from the

central office to the customer's premises

- Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services
- Access to 911 service; directory assistance services; and operator call completion services
- White pages directory listings for customers of other carrier's telephone exchange service
- Access to telephone numbers of other carrier's customers
- Access to databases and associated signaling necessary for call routing and completion.
- Number portability
- Access to services or information necessary to allow the requesting carrier to implement local dialing parity
- Reciprocal compensation arrangements
- Resale of telecommunication services

Except for single LATA states and states which have issued an order by December 19, 1995, requiring a BOC to implement toll dialing parity, a state may not require a BOC to implement toll dialing parity in a LATA before a BOC has been granted authority to provide interLATA services originating in that LATA or before three years after the date of enactment of the *Telecommunications Act*.

Large IXC's (interexchange companies, i.e., long distance) are prohibited from joint marketing resold local and long-distance, audio, video and other services until the incumbent BOC is allowed into long-distance markets or until 1999, whichever comes first.

The states' role in this process is critical. They will arbitrate issues not resolved through negotiation, and must certify compliance with the checklist items whether negotiated or arbitrated. BOC entry into in-region long-distance markets is contingent upon state certification of these checklist items, FCC consultation with the U.S. Attorney General, and ultimately FCC authorization. The FCC must consult with state commissions when considering a BOC's application to offer interLATA long-distance services that originate within a state in its region. The state commission's role is to verify the presence of a facilities-based provider (or verify that no such provider has requested interconnection) and the existence of an approved interconnection agreement that satisfies the 14-point check list.

Separate affiliate; safeguards: BOCs may provide in-region long-distance services and manufacture equipment once interconnection requirements have been met, but must do so through a separate affiliate for a period of three years after which the restriction is lifted. Long-distance information services (other than electronic publishing and alarm monitoring) must be provided through a separate affiliate for a period of four years.

Manufacturing by Bell operating companies: A BOC may manufacture and provide telecommunications equipment, and manufacture customer premises equipment, if the FCC authorizes the BOC or any BOC affiliate to provide interLATA long distance services.

Electronic publishing by Bell operating companies: BOCs may engage in electronic publishing only through a separate affiliate for a period of four years at which time the restriction of a separate subsidiary ends.

Alarm monitoring services: BOCs or their affiliates are prohibited from entering the alarm monitoring service for a period of five years at which time the restriction ends.

Provision of pay phone service: A BOC is prohibited from discriminating in favor of or subsidizing its pay phone service.

BROADCAST SERVICES

Broadcast spectrum flexibility: The FCC may issue additional licenses for advanced (i.e., digital) television services to existing broadcasters. However, there is an informal agreement between certain members of Congress and the FCC agreeing the FCC will not take action until Congress can revisit the issue.

Broadcast Ownership: Nationwide limits on the number of AM and FM radio stations one entity can own are eliminated; limits on the number of radio stations in one locality one entity can own are also lifted; and national coverage of television stations owned by one entity is raised to 35 percent of the viewing homes in the country. The FCC was also instructed to review its rules which limit one party from owning more than one television station in a market, and the FCC is given authority to waive its rules forbidding common ownership of radio and television stations in the top 50 markets in the country.

Owners of a network of television stations may now own a cable television system. The FCC must review its media cross-ownership rules every two years to determine their continued usefulness.

Term of Licenses: Radio and broadcast license terms were extended to a uniform eight years. The terms had been five years for television stations and seven years for radio stations.

Broadcast license renewal: The FCC will no longer consider competing applications for a station license that is up for renewal unless it determines the station has committed a serious violation of broadcasting laws and regulations, or has a pattern of such offenses.

Direct broadcast satellite service: The FCC has exclusive jurisdiction over the direct broadcast satellite industry.

Restrictions on over-the-air reception systems: Prohibits restrictions that impair a viewer's ability to receive video programming through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

CABLE SERVICES

Cable Act reform: A sunset date of 1999 is set for FCC rate regulation of any cable television channels carried by larger systems, and deregulates rates for cable television services on cable systems with fewer than 50,000 customers. Rates are deregulated for cable systems if they face effective competition from an affiliate of the local telephone company offering video programming service. A law which had prevented cable system owners from selling their system within three years of beginning construction or buying their system was also lifted. State and local laws which may have prohibited cable television systems from entering into telecommunications businesses are now preempted.

Video programming services provided by telephone companies: Telephone companies will be permitted to offer video programming to their subscribers, under either the common carrier or cable television regulatory regimes. A telephone company can be designated an open video system provider. As an open video system provider they will act as a common carrier for at least two-thirds of the channels if there is a shortage of channel space. The FCC will develop minimal regu-

lations for such open video systems. It also provides for acquisitions and joint ventures by carriers and cable operators in certain instances to ensure competition and rural service. And finally, provides for preemption of franchising authority regulation of telecommunications services provided by cable operators.

Competitive availability of navigation devices (set top boxes): Provides for the commercial consumer availability of equipment (set top boxes) used to access services provided by multichannel video programming distributors.

Video programming accessibility: Provides for the FCC to adopt rules requiring close captioning and access to video descriptions for the visually impaired.

REGULATORY REFORM

Regulatory forbearance: The FCC shall cease from regulating telecommunications carriers and/or services if the FCC determines that such regulations are not necessary to ensure that rates are just and reasonable or to protect consumers. The FCC must also determine whether forbearance will enhance competition. Prior to granting forbearance the FCC must determine that certain competitive conditions have been met.

Biennial review of regulations; regulatory relief: The FCC must conduct a biennial review, beginning in 1998, to determine whether any regulations issued under the legislation are no longer necessary to the public interest, as the result of meaningful economic competition. The FCC shall: further streamline rate regulation; exempt any common carrier from filing requirements for the extension of any lines; and limit such carriers to filing cost allocation manuals and ARMIS reports annually.

Elimination of unnecessary Commission regulations and functions: The FCC has the flexibility to eliminate a variety of commission regulations and functions relating to: amateur radio; inspections; depreciation rates; and license modification among others.

OBSCENITY (Telecommunications Decency Act)

Obscene, Harassing, and Wrongful Utilization of Telecommunications Facilities: Obscene or harassing uses of telecommunications facilities or devices, including an interactive computer service such as the

Internet, is specifically prohibited under the legislation, violation commands a substantial fine and/or prison term of not more than two years. There are certain legal defenses available to providers, including taking "good faith, reasonable, effective and appropriate" actions to restrict or prevent access by minors. Additionally, merely providing access or connection to or from a facility or system not under a person's control is a defense, provided the person has not created the offensive content.

The legislation states, no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information which is provided by the author. Further, no provider or user of such interactive computer services shall be held liable for its good faith effort to restrict access to or availability of material that the provider or user considers to be obscene "whether or not such material is constitutionally protected."

(Note: As of publication this section has been found to be unconstitutional by the U.S. District Court of the Eastern Division of Pennsylvania on the grounds it violates free speech. An appeal to the Supreme Court is likely.)

Scrambling of sexually explicit adult video service programming: Upon subscriber request, cable companies must scramble their signals without charge, or must otherwise block the signal. Cable operators may refuse to carry public, educational and government programs which contain obscenity, indecency or nudity. Multichannel video programming (MDS) distributors who disseminate sexually explicit adult video programming must fully scramble or block their signals. Until such scrambling is possible, MDS providers must limit the time of day for such programming to times when few children would reasonably be watching.

VIOLENCE

Parental choice in television programming: If, within one year from enactment, the FCC determines that distributors of video programming have not voluntarily established an acceptable rating system, the FCC must form an advisory committee, comprised of a broad range of related interest groups, to produce guidelines and recommend procedures for the identification of rating video programming containing sexually explicit, violent or indecent material. The report is due within one year of the appointment of the committee.

The legislation mandates that all television sets thirteen inches or larger include a feature, known as the V-Chip, designed to enable viewers to block display of all programs with a common rating. Deadline for manufacturing of V-Chip television sets is to be set by the FCC after consultation with the television manufacturing industry, but shall be no sooner than two years from enactment of the legislation.

Technology Fund: Establishing an industry technology fund is encouraged to develop technology to empower parents to block programming they deem inappropriate.

Judicial Review: Provides for expedited judicial review for civil challenges to the constitutionality of this title.

EFFECT ON OTHER LAWS

Applicability of consent decrees and other laws: The 1982 Bell System, 1985 GTE, and 1995 AT&T/McCaw Cellular Consent Decrees are preempted. GTE may begin to offer all long-distance services upon enactment, while the BOCs must meet the conditions set forth earlier in this paper (14-Point Checklist). AT&T's Consent Decree requirement that it allow its cellular customers to choose a long-distance carrier is removed.

Preemption of local taxation with respect to direct-to-home services: Direct-to-home satellite services are preempted from local taxes or fees.

MISCELLANEOUS PROVISIONS

Prevention of unfair billing practices for information or services provided over toll-free telephone calls: Adds protection against the use of toll free telephone numbers to connect an individual to a "pay-per-call" service. Also provides that subscribers who call an 800 number or other toll free numbers shall not be charged for the calls unless the party agrees to be charged under a written subscription agreement or other appropriate means.

Privacy of customer information: Provides for the privacy of customer information, and confidentiality of carrier, and customer proprietary network information.

Pole attachments: Rates, terms, and conditions for attaching to poles, ducts, conduits, and rights-of-way controlled by utilities are to be negotiated. Access to poles is to be non-discriminatory, but the utility re-

tains the right to deny access for reasons of safety or inadequate capacity.

Facilities citing; radio frequency emission standards: State and local authority regarding placement of personal wireless services facilities is preserved. However, rules are to be established regarding the environmental effects of radio emissions including that no state or local government, or instrumentality thereof, may regulate the placement, construction, and modification of personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning emissions.

Mobile services direct access to long distance carriers: Mobile services providers do not have to provide equal access to common carriers for the provision of telephone toll services.

Advanced telecommunications incentives: FCC and state commissions shall encourage infrastructure development to provide for advanced telecommunications capability, particularly for elementary and secondary schools, through price cap regulation, regulatory forbearance and methods promoting competition.

Telecommunications Development Fund: A fund is established to promote access to capitol for small business to enhance competition in the telecommunications industry; to stimulate new technology development, and employment and training; and to support universal service and promote delivery of telecommunications services to under served rural and urban areas.

National Education Technology Funding Corporation: The NETFC will leverage resources and stimulate private investment in education technology infrastructure; designate state education technology agencies to receive loans, grants or other forms of assistance; and to establish criteria to encourage states to enhance educational technology.

Report on the use of advanced telecommunications services for medical purposes: The federal government shall report on its examination of questions relating to patient safety, the efficacy and quality of services provided, and other legal, medical, and economic issues related to the utilization of advanced telecommunications services for medical purposes.

GLOSSARY OF TERMS

(From the *Telecommunications Act*)

AFFILIATE — The term "affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

AT&T CONSENT DECREE — The term "AT&T Consent Decree" means the order entered August 24, 1982, in the antitrust action styled *United States v. Western Electric*, Civil Action No. 82—0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

BELL OPERATING COMPANY — The term "Bell operating company" means:

(A) any of the following companies: Bell Telephone Company of Nevada, Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, U S West Communications Company, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, Southwestern Bell Telephone Company, The Bell Telephone Company of Pennsylvania, The Chesapeake and Potomac Telephone Company, the Chesapeake and Potomac Telephone Company of Maryland, The Chesapeake and Potomac Telephone Company of Virginia, The Chesapeake and Potomac Telephone Company of West Virginia, the Diamond State Telephone Company, The Ohio Bell Telephone Company, The Pacific Telephone and Telegraph Company, or Wisconsin Telephone Company; and

(B) includes any successor or assign of any such company that provides wire line telephone exchange service; but

(C) does not include an affiliate of any such company other than an affiliate described in subparagraph (A) or (B).

CABLE SERVICE — The term "cable service" means

(A) the one-way transmission to subscribers of (I) video programming, or (II) other programming service, and

(B) subscriber interaction, if any, which is required for selection or use of such video programming or other programming service.

CABLE SYSTEM — The term "cable system" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include

(A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations;

(B) a that serves subscribers without using any public right-of-way;

(C) a facility of a common carrier except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(D) an open video system;

(E) any facilities of any electric utility used solely for operating its electric utility systems.

CUSTOMER PREMISES EQUIPMENT — The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

DIALING PARITY — The term "dialing parity" means that a person not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of an access code, their telecommunications to the telecommunications services provider of the customer's designation from among two or more telecommunications services providers (including such local exchange carrier).

EXCHANGE ACCESS — The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

INFORMATION SERVICE — The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

INTERLATA SERVICE — The term "interLATA service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

LOCAL ACCESS AND TRANSPORT AREA — The term "local access and transport area" or "LATA" means a contiguous geographic area

(A) established before the date of enactment of the Telecommunications Act of 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) established or modified by a Bell operating company after such date of enactment and approved by the Commission.

LOCAL EXCHANGE CARRIER — The term "local exchange carrier" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service except to the extent that the Commission finds that such service should be included in the definition of such term.

NETWORK ELEMENT — The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

NUMBER PORTABILITY — The term "number portability" means the ability of users of telecommu-

nications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

RURAL TELEPHONE COMPANY — The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity

(A) provides common carrier service to any local exchange carrier study area that does not include either—
(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

“(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

“(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the *Telecommunications Act* of 1996.

TELECOMMUNICATIONS — The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TELECOMMUNICATIONS CARRIER — The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators (any person, that in the ordinary course of its operations, makes telephones available to the public or to transient users its premises, for interstate telephone calls using a provider of operator services) of telecommunications services. A telecommunications carrier shall be treated as a common carrier under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

TELECOMMUNICATIONS EQUIPMENT — The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

TELECOMMUNICATIONS SERVICE — The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

The American Legislative Exchange Council's mission is to advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty through a non-partisan, public-private partnership between America's state legislators and concerned members of the private sector, the federal government and the general public.

The American Legislative Exchange Council (ALEC) is the nation's largest bipartisan, individual membership association of state legislators, with 3,000 members across America. Among the leadership of America's state legislatures, ALEC members have an impressive presence: 31 Speakers and Speaker Pro Tems; 37 Senate Presidents and Senate Pro Tems; 25 Senate Majority and Minority Leaders; 38 House Majority and Minority Leaders. Twelve sitting Governors are alumni of ALEC, as are 77 members of Congress.

ALEC brings the states and the nation together through conferences, seminars, publications, and its nine Task Forces. Each provides a unique vehicle for legislators to communicate across state lines, share experiences and ideas, and work in unison with the private sector to create effective public policies.

ALEC's Task Forces provide a forum for legislators and the private sector to discuss issues, develop policies and write model legislation. The legislative sessions of 1995-1996 were by far the most successful in ALEC's history for its model legislation. The number of ALEC model bills introduced in the states in 1995-1996 totaled 1,647, with 365 achieving enactment for a success rate of 22 percent!

ALEC's credo is that the private sector should be an ally, not an adversary, of state legislators. Through ALEC, legislators and the private sector work in a dynamic partnership to develop public policies that harness the immense power of free markets and free enterprise to encourage economic growth, increase the nation's competitiveness, and improve the quality of life for all Americans.

**Telecommunications and
Information Technology
Task Force**

**Texas State Representative
Bill Carter
Chairman**

**Ms. Cindy Brinkley
SBC Communications, Inc.
Private Sector Chairwoman**

As the nation's largest bipartisan individual membership association of state legislators, the American Legislative Exchange Council's (ALEC) mission is to advance the Jeffersonian principles of individual liberty, limited government, federalism and free markets through a partnership between state legislators and concerned members of the private sector, the federal government and the general public.

With the passage of the federal *Telecommunications Act* in 1996, perhaps the most significant deregulation of an industry in American history, the challenge for government policy now moves to the states.

ALEC's Telecommunications and Information Technology Task Force, which was directly involved in developing and advancing many of the free market policies now in place at the national level, is ready for the challenge.

With more than 100 state legislators as members, as well as private sector members who represent a broad spectrum of industries in the field, the Task Force is poised to become a major force in the development of state level telecommunications tax and regulatory policy. In 1995 the Task Force published issue papers on telecommunications regulatory reform, and a survey on information technology in the states. In 1996 the Task Force appointed two new ad hoc subcommittees: one to focus on the *Telecommunications Act of 1996*, and one to focus on telecommunications tax issues. The Task Force's *Regulatory Reform* model bill (which allows competition in local service and deregulates local phone prices) was enacted in six states in 1995.

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